REMARKS

In response to the Office Action mailed June 6, 2005, Applicant has amended claims 1, 15 and 23 to better define the present invention and to overcome the 35 U.S.C. Section 112 rejections.

Applicant appreciates the withdrawal of the section 102 rejections; clearly the present application is not anticipated by the art previously cited.

Further prosecution of the present application and reconsideration and withdrawal of the rejections of the claims are respectfully requested.

THE PRESENT INVENTION

The present invention concerns a scale and computer means for determining the nutritional values of foods and displaying those values. Specifically a portion of food is weighed on the device and the weight information is used to find accurate determinations of the nutritional characteristics of the particular portion of food weighed. In a preferred embodiment, the device comprises a scale for weighing foods and a computer having a microprocessor, one or more memory means and input means. Further, the device includes data stored in at least one of the one or more memory storage locations in the device, the stored data including information on nutritional values of foods. **The device comprises a large screen such that all nutritional values determined by the processing means can be displayed simultaneously**. By using a large screen, when a portion of food is placed on the scale and the type of food is entered into the computer by the input means, nutritional values can be determined and all simultaneously displayed on the screen for comparison.

THE CITED REFERENCES; SPECIFICALLY WILLIAMS, III

The Office Action has rejected claims 1-3, 7, 9, 10-12, 15, 20 and 21 under 35 U.S.C. Section 103(b) as being unpatentable over Attikiouzel (U.S. Patent No. 4,91,256), as cited in the previous action and in view of Williams, III (U.S. Patent No. 5,704,350). The '256 reference discloses a dietetic measuring apparatus which comprises a scale, a keyboard for typing in the actual names of foods, computation means which permits the user to determine certain values of

foods and a single line screen which permits the display of one calculated or entered value at a time (see col. 4, lines 59-64). As previously noted, and as now accepted by the Examiner in his withdrawal of the section 102 rejections, the '256 patent does not on its own teach the application as presently amended.

The Williams, III ('350) patent teaches a hand held diet calculator that shows a number of values simultaneously. However, there is no indication that *all* values can be displayed simultaneously, nor that as many nutritional elements, as shown and described in the present application, are viewable on one screen. For example, see Figure 13 which shows a full screen of Williams, III with only 5 nutritional elements shown. Clearly, the user would need to page to a different screen to find other important values and then back to the first screen to recheck the original values. As noted in the Applicant's previous response, diets are difficult enough to maintain without the added complexity of a frustrating device with layers of complexity in viewing important details for the dieter.

Further, Williams, III is a hand held device that includes no scale or other weighing means and therefore any determinations of nutritional values are at best guesses. It is also believed that it is the portability of the device that makes Williams, III a patentable invention. Non-portable computers having dietetic values were well known in the art prior to Williams, III. However, the combination of a scale and display screen showing quickly and easily the number of nutritional values (as in the present invention) of a food, in one easy to understand screen, was not uncovered by the Examiner's search. Portability, in the manner shown in Williams, III is not possible if a scale for measuring foods is attached thereto. It is therefore unlikely that a person having ordinary skill in the art would look to Williams, III in modifying Attikiouzel to arrive at the present invention. In fact, Attikiouzel and Williams, III are in different fields of art, one being a scale for measuring foods, and the other being a computational and data storage device for theoretical determination of nutritional values and exercise. Further, as the screen of Williams, III does not provide the details shown in the present inventions such a modification would not and could not produce the present invention.

With respect to the rejections of the dependent claims noted by the Office Action, Applicant respectfully notes that as the combination of Attikiouzel and Williams, III does not show the teachings of the screen of the present invention, as shown in the claims as now amended and that therefore the dependent claims are also not shown in that combination.

The Addition of Gardner Does Not Make the Present Invention Obvious

Claims 4-6, 13-14 and 16-18 and 22-27 have been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Attikiouzel in view of Gardner (GB 2 317 961). As noted above, Attikiouzel alone or in combination with Williams, III does not make obvious on its own the present invention. Individually or in combination, those references do not teach a screen showing all results simultaneously, Gardner does not overcome this deficiency.

Applicant submits that the other references cited also lack the teaching of the simultaneous display of all nutritional factors in one screen for ease of use and reference.

The Addition of Muyal Does Not Make the Present Invention Obvious

Claims 8 and 19 have been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Attikiouzel/Williams, III in view of Muyal (US 2003/0168260). As noted above, Attikiouzel/William, III does not make obvious the present invention. Applicant respectfully notes that Muyal does not teach the use of a screen that would overcome the deficiencies in Attikiouzel and Williams, III. It is respectfully submitted that the device of the present invention is not taught by any combination described in the office action.

A COMBINATION OF REFERENCES THAT HAVE NO CONNECTION DOES NOT PROVIDE A GROUNDS FOR AN OBVIOUSNESS REJECTION

As noted above Williams, III teaches a hand held nutritional computer. Williams, III is directed to the use of the device anywhere the user goes, making its use, in for example, restaurants and food places away from home, easy; the portability of such a device is key to the flexibility of its use. Williams, III uses a multitude of screens to show different information at different times. The user of Williams, III must scroll through any number of screens to secure the information provided in one screen of the present invention.

The Office Action suggests that the screen of Attikiouzel is capable of being replaced with the screen of Williams, III. The screen of Williams, III does not provide all of the information that the device of the present invention provides. The user of such a combined device would still have to page through to different screens to get all of the information shown in one screen of the device of the present invention; and as previously explained it is important to

have all of the information on the same screen so that it can all be understood together and so that the user does not become frustrated at the number of steps needed to get information. **The fact that a person would have to page through more than one screen to get all the information needed (or at least all of the information provided on one screen in the present invention) is no (or at best very little) improvement over that shown in Attikiouzel.**

Further, while it might have been possible to add the screen of Williams, III to the device of Attikiouzel, it is unlikely that persons having ordinary skill in the art would have looked to a personal portable computer to arrive at the screen needed for a stationary scale and computer combination. As noted by the court of appeals for the Federal Circuit, and stated in the MPEP (section 2143.01):

> FACT THAT REFERENCES CAN BE COMBINED OR MODIFIED IS NOT SUFFICIENT TO ESTABLISH *PRIMA FACIE* OBVIOUSNESS
>
> The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

As has been noted, not only is there no teaching towards the combination, there is also little or no benefit as a user, of such a combination, would still have to page through a number of screens to get the information desired. The suggestion that such an action would be considered by a person having ordinary skill in the art, a modification that would only slightly improve the device and still require the user to page through a number of screens, is unreasonable. The courts have held that:

> A statement that modifications of the prior art to meet the claimed invention would have been " 'well within the ordinary skill of the art at the time the claimed invention was made' " because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). See also *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1318 (Fed. Cir. 2000).

Here, there is no reason (expressed in any of the references cited) why a person would combine these two references to arrive at a device that still falls short of the present invention. Even if the devices were combined they together do not teach the device of the present invention.

RECONSIDERATION AND ALLOWANCE REQUESTED

Applicant hereby respectfully requests reconsideration, continued examination and allowance of the claims. A sincere effort has been made to overcome the Action's rejections and to place the application in allowable condition. Applicant invites the Examiner to call Applicant's attorney to discuss any aspects of the invention that the Examiner may feel are not clear or which may require further discussion.

In view of the foregoing remarks, it is believed that the claims are allowable and a Notice of Allowance is respectfully requested.

Applicant believes that no fee is due with respect to this response. However, if a fee is due, authorization is hereby given to charge any fees in connection with the subject patent application to Deposit Account No. 23-0920. Further, if the any paper or petition is required, Applicant requests that this paper be considered as a such a paper or petition and that any required fee be charged to the above-noted Deposit Account.

Respectfully submitted,

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